

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**February 6, 2001**

**IN RE:** )  
 )  
**COMPLAINT OF DISCOUNT** ) **DOCKET NO. 00-00230**  
**COMMUNICATIONS, INC.** )  
**AGAINST BELL SOUTH** )  
**TELECOMMUNICATIONS, INC.** )

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**ORDER DENYING PETITION FOR RECONSIDERATION  
AND PETITION TO RECONSIDER**

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On October 31, 2000, the following matters came before the Tennessee Regulatory Authority ("Authority") at a specially noticed hearing: a *Petition for Reconsideration* filed on October 12, 2000 by BellSouth Telecommunications, Inc. ("BellSouth"); a *Petition to Reconsider* filed on October 13, 2000 by Discount Communications, Inc. ("Discount"), as corrected and re-filed by Discount on October 16, 2000; and Discount's *Request to Continue Escrow Account Pending Decision on Petition to Reconsider* filed on October 17, 2000.

**Background**

The above captioned matter first came before the Authority upon the filing by Discount of a formal letter of complaint against BellSouth. In this letter filed on March 16, 2000, Discount stated that BellSouth had discontinued Discount's access to the LENS system<sup>1</sup> due to a billing dispute. Discount requested the Authority to schedule an expedited hearing and require that BellSouth restore access to the LENS system pending a resolution of the dispute.

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<sup>1</sup> The LENS system allows Discount to place orders for service, verify orders, amend/correct orders, suspend/disconnect non-paying customers, examine local service records, examine customer service records and transfer existing customers.

At a Status Conference immediately following the regularly scheduled Authority Conference held on March 28, 2000, the Directors appointed General Counsel to serve as Pre-Hearing Officer to resolve any pre-hearing disputes, including any failure to comply with the escrow account specified in the Compromise Agreement entered into by the parties at that Status Conference. At a second Status Conference held on April 5, 2000, the Pre-Hearing Officer considered BellSouth's *Motion to Compel Disclosure or, in the Alternative, to Find Discount Communications in Violation of the Compromise Agreement*, which was filed earlier that day. During the second Status Conference, BellSouth's Motion was denied based upon the agreement of the parties that the law firm of Boulton, Cummings, Conners & Berry would act as interim escrow agent for receipt of payments by Discount.

On April 4, 2000, the Consumer Advocate Division of the Office of the Attorney General ("Consumer Advocate") filed a *Petition for Information*. In this Petition, the Consumer Advocate stated that the requested information was necessary to determine whether intervention by the Consumer Advocate was warranted to represent the interests of Tennessee consumers. On April 11, 2000, the Consumer Advocate filed a *Petition to Intervene* in this docket. A hearing commenced on this matter on April 11, 2000, and the Consumer Advocate's *Petition to Intervene* was granted at the beginning of the hearing.

On June 6, 2000, the Directors of the Authority publicly deliberated the issues as originally set forth before them. Chairman Kyle filed a *Dissenting Opinion* on September 6, 2000, and the Authority's final *Order* was entered on September 28, 2000.

#### **Instant Filings**

On October 12, 2000 BellSouth filed a *Petition for Reconsideration* of the final *Order* relative to the issue of directory assistance. On October 13, 2000, and as corrected on October

16, 2000, Discount filed a *Petition to Reconsider* the final *Order* relative to the Lifeline issue. On October 17, 2000 Discount filed a *Request to Continue Escrow Account Pending Decision on the Petition to Reconsider*. In that request, Discount asked the Authority to maintain the escrow account until action by the Authority on the *Petition to Reconsider*.

On October 19, 2000, Discount filed a *Response to BellSouth's Petition for Reconsideration*. On October 20, 2000, BellSouth filed its *Response to Discount's Petition to Reconsider* and its *Response to Discount's Request to Continue Escrow Account Pending Decision on Petition to Reconsider and Request for a New Escrow Arrangement*. In the latter filing, BellSouth states that the TRA should reject the escrow arrangement requested by Discount, and proposes an alternative escrow arrangement along with a hearing to address any other documented billing disputes.

On October 27, 2000, the Consumer Advocate filed a *Response to Discount's Petition to Reconsider*, which simply adopts the position of Discount.

### **Escrow Account**

A review of the Compromise Agreement entered into on March 30, 2000 shows that the parties agreed to the following:

Beginning April 4, 2000 and continuing until and including the date the TRA makes a **final ruling** on all proposed issues submitted by Discount Communications to the TRA pursuant to and in accordance with the Agreed Procedural Order jointly filed by Discount Communications and BellSouth on or about March 29, 2000, Discount Communications shall pay into the escrow account established by agreement of the parties the amount of \$1,500 by 5:00 p.m. each and every Tuesday, Wednesday, Thursday, and Friday and \$4,500 each Monday. (emphasis added).

If there were no petitions to reconsider before the Authority, the date of the "final ruling" would be September 28, 2000, which is the date of entry of the final *Order*. While the Compromise Agreement effectively provides that the escrow account is to remain in effect at least until the

Authority disposes of one or both of the petitions for reconsideration, denial of such petitions would dispose of the *Request to Continue the Escrow Account*.

### **Findings and Conclusions**

Pursuant to Tenn. Code Ann. § 4-5-317 and TRA Rule 1220-1-2-.20, the Authority must either act on the petitions seeking reconsideration within 20 days or they shall be deemed denied. Therefore, the Authority set a special hearing on October 31, 2000 specifically to act on the petitions. First, the Directors considered Discount's *Petition to Reconsider* the Authority's Lifeline decision. A majority of the Directors had previously concluded that Lifeline is essentially an assistance program designed to subsidize local telephone service.<sup>2</sup> The majority had further concluded that Discount did not prove that BellSouth collects an implicit subsidy in today's rates that is sufficient to fund the state Lifeline credits for Discount's subscribers.<sup>3</sup> Based on these conclusions, the majority decided that the state's interim policy of requiring resellers like Discount to fund the state Lifeline credits for their own subscribers is consistent with federal and state law. The majority further determined that the parties' Resale Agreement and BellSouth's Lifeline tariff properly implemented this interim policy. After considering Discount's *Petition* and BellSouth's *Response* in light of the record as a whole, the majority<sup>4</sup> opined that its Lifeline decision, as memorialized in the September 28, 2000 final *Order*, was correct.

The Authority next considered BellSouth's *Petition for Reconsideration* of the Authority's directory assistance decision. The Authority had previously determined that the difference in costs between the 16% wholesale rate option set in the avoidable cost proceeding

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<sup>2</sup> September 28, 2000 *Order*, p. 11.

<sup>3</sup> September 28, 2000 *Order*, p. 13.

<sup>4</sup> Based upon her *Dissenting Opinion* of September 6, 2000, Chairman Kyle did not concur with the majority relative to their denial of Discount's *Petition to Reconsider*.

and the 21.56% option set in the first arbitration proceeding represents the wholesale rate for directory assistance and operator services in a resale situation.<sup>5</sup> Thus, by selecting the 16% wholesale rate option at the time the Resale Agreement was negotiated, Discount is entitled to receive directory assistance and operator services at no additional charge for the term of the agreement. After considering BellSouth's Petition and Discount's Response in light of the record as a whole, the Authority opined that its directory assistance decision, as memorialized in the September 28, 2000 final *Order*, was also correct.

Through the Authority's action denying both the *Petition for Reconsideration* and the *Petition to Reconsider*, the *Request to Continue the Escrow Account* filed by Discount was rendered moot.

#### **Correction of September 28, 2000 Order**

Finally, the Authority directed that a clerical error in the final *Order* of September 28, 2000 be corrected as follows: footnote 41 on page 12 should cite "BellSouth's Lifeline tariff, GSST A3.31.1.C." in place of "Resale Agreement, Section 1 C. Description of Service." Further, the reference to "resale agreement with Discount" on Page 12 preceding the above-cited quote is deleted and replaced with "tariff." This incorrect citation and reference resulted from a clerical mistake that is not material to the Authority's decision.

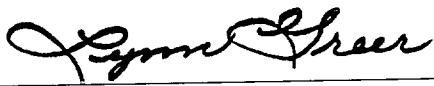
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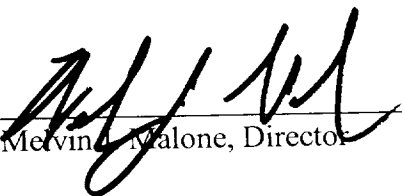
<sup>5</sup> September 28, 2000 *Order*, p. 10.

**IT IS THEREFORE ORDERED THAT:**

1. BellSouth Telecommunications, Inc.'s *Petition for Reconsideration* is denied;
2. Discount Communications, Inc.'s *Petition to Reconsider* is denied;
3. Discount Communications, Inc.'s *Request to Continue Escrow Account Pending Decision on the Petition to Reconsider* has been rendered moot; and
4. The September 28, 2000 final *Order* is corrected as specified herein.

  
Sara Kyle, Chairman \*\*\*

  
H. Lynn Greer, Jr., Director

  
Melvin Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary

\*\*\* Chairman Kyle did not concur with the majority relative to their denial of Discount's *Petition to Reconsider* (the Lifeline issue), but voted with the majority to deny BellSouth's *Petition for Reconsideration* (the directory assistance issue).